

1 BLANCA F. YOUNG (State Bar No. 217533)

2 Blanca.Young@mto.com

3 ACHYUT J. PHADKE (State Bar No. 261567)

4 Achyut.Phadke@mto.com

5 MUNGER, TOLLES & OLSON LLP

6 560 Mission Street

7 Twenty-Seventh Floor

8 San Francisco, California 94105-2907

9 Telephone: (415) 512-4000

10 Facsimile: (415) 512-4077

11 Attorneys for Defendants

12 Corinthian Colleges Inc., David Moore,

13 and Jack D. Massimino

14 UNITED STATES DISTRICT COURT

15 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

16 United States ex rel. Nyoka Lee, et  
17 al.,

18 Plaintiff,

19 vs.

20 Corinthian Colleges Inc., et al.,

21 Defendants.

Case No. 07-cv-01984 PSG (MANx)

**DEFENDANTS CORINTHIAN  
COLLEGES, INC., DAVID MOORE,  
AND JACK D. MASSIMINO'S  
REQUEST FOR JUDICIAL NOTICE  
IN SUPPORT OF RULE 12(B)(1)  
MOTION TO DISMISS**

Judge: Honorable Philip S. Gutierrez

Courtroom: 880

Date: March 11, 2013

Time: 1:30 p.m.

1 Defendants Corinthian Colleges, Inc., David Moore, and Jack D. Massimino  
 2 (the “School Defendants”) respectfully request that the Court take judicial notice of  
 3 Exhibits 1 through 24 in connection with the School Defendants’ Rule 12(b)(1)  
 4 Motion to Dismiss.

5 Pursuant to Federal Rule of Evidence 201, the Court may take judicial notice  
 6 of a fact “not subject to reasonable dispute [if] it (1) is generally known within the  
 7 trial court’s territorial jurisdiction; or (2) can be accurately and readily determined  
 8 from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid.  
 9 201(b). The Court may take judicial notice of the matters below.

### 10 **1. Complaints and Court Filings in Other Cases**

11  
 12 *First*, the School Defendants request that the Court take judicial notice of the  
 13 complaints and court filings listed below as Exhibits 1-11, and 13-15, and 20-24 for  
 14 the purpose of establishing the fact of those filings and that they were publicly  
 15 disclosed as of the date they were filed or the action was unsealed, whichever  
 16 occurred later.

17 Exhibits 1-11, and 13-15, and 20-24 are publicly filed complaints and  
 18 documents in court proceedings involving substantially similar allegations to the  
 19 claims in this action. Each of these documents is available on PACER or other  
 20 public databases of court records, or in the records of the court where the action was  
 21 filed. The Court may take judicial notice of pleadings and papers filed with it and  
 22 with other courts in related actions. *See Burbank-Glendale-Pasadena Airport Auth.*  
 23 *v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998) (granting request for  
 24 judicial notice of pleadings in related action); *MGIC Indem. Corp. v. Weisman*, 803  
 25 F.2d 500, 504 (9th Cir. 1986) (same); *Kuan v. U.S. Customs Serv.*, No. CV 08-1980-  
 26 DDP, 2009 WL 6340016, at \*1 n.3 (C.D. Cal. Dec. 16, 2009) (“The Court may take  
 27 judicial notice of matters of public record, including court records in a related  
 28

proceeding.”); *In re Edward Jones Holders Litig.*, 453 F. Supp. 2d 1210, 1217 n.8 (C.D. Cal. 2006) (judicial notice of related proceedings).

## 2. Government Reports and Congressional Testimony

*Second*, the School Defendants request that the Court take judicial notice of government reports and congressional testimony attached as Exhibits 12 and 16-19, for the purpose of establishing the fact of those reports and testimony and the dates when they were made public.<sup>1</sup> Judicial notice of these matters is appropriate because they are official government reports and are publicly available on the U.S. Government Printing Office’s website, <http://www.gpo.gov/>, or the U.S. Government Accountability Office, <http://www.gao.gov>, or in the Federal Register. *See Javaheri v. JPMorgan Chase Bank, N.A.*, No. CV10-08185 ODW, 2011 WL 97684, at \*2 (C.D. Cal. Jan. 11, 2011) (“Government reports and publications . . . [are] judicially noticeable.”) (internal citation omitted); *accord Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994) (“Records and reports of administrative bodies” are subject to judicial notice); *Oregon State Bar Prof’l Liab. Fund v. U.S. Dep’t of Health & Human Servs.*, No. 10-cv-1392, 2012 WL 1071127, at \*3 (D. Or. Mar. 29, 2012) (taking judicial notice of GAO report); *Paralyzed Veterans of Am. v. McPherson*, No. 06-cv-4670, 2006 WL 3462780 at \*4 (N.D. Cal. Nov. 28, 2006) (taking notice of Congressional reports).

## 3. Susan Newman’s Role as a Relator in Earlier Cases Filed by Relators’ Counsel

*Third*, the School Defendants request that the Court take judicial notice that Susan Newman was named as a relator in the complaints listed as Exhibit 1 and Exhibit 5 below, and that Scott Levy (who is counsel for the Relators in the instant

---

<sup>1</sup> In the interests of efficiency, the School Defendants have submitted excerpts from these documents. Of course, the School Defendants will submit these documents in their entirety if the Court requests them.

lawsuit) was identified as counsel for the relator in those complaints, as well as in the complaints listed as Exhibits 2, 3, and 4 below. As discussed above, the Court may take judicial notice of pleadings filed in other litigation.

Exhibit	Description
1	Second Amended Complaint, <i>U.S. ex rel. Graves v. ITT Educ. Servs., Inc.</i> , No. H-99-3889 (S.D. Tex. Apr. 23, 2002) (case unsealed on May 30, 2001) <sup>2</sup>
2	Complaint, <i>U.S. ex rel. Bowman v. Educ. Am., Inc.</i> , No. 00-cv-03028 (S.D. Tex. Aug. 29, 2000) (case unsealed on November 27, 2001)
3	Complaint, <i>U.S. ex rel. Payne v. Whitman Educ. Grp., Inc.</i> , No. 03-cv-03089 (S.D. Tex. Dec. 3, 2002) (case unsealed on April 23, 2003)
4	First Amended Complaint, <i>U.S. ex rel. Gay v. Lincoln Tech. Inst., Inc.</i> , No. 3:01-CV-505-D (N.D. Tex. Sept. 17, 2002) (case unsealed on February 28, 2002)
5	Second Amended Complaint, <i>U.S. ex rel. Bott v. Silicon Valley Colleges</i> , No. 04-cv-0320 (N.D. Cal. July 22, 2005) (case unsealed on May 26, 2004)
6	Complaint, <i>U.S. ex rel. Main v. Oakland City Univ.</i> , No. 3:03-cv-00071 (S.D. Ind. Apr. 28, 2003) (case unsealed on December 9, 2003)
7	Second Amended Complaint, <i>U.S. ex rel. Hendow v. Univ. of Phoenix</i> , No. 2:03-cv-00457 (E.D. Cal. Mar. 4, 2004) (case unsealed on May 7, 2003)
8	Complaint, <i>U.S. ex rel. Ector v. Axia College</i> , No. 1:05-cv-01637 (D.D.C. Aug. 15, 2005) (case unsealed on June 15, 2006)
9	Complaint, <i>U.S. ex rel. Gatsiopoulos v. Kaplan Higher Educ. Corp.</i> , No. 2:06-cv-1452 (W.D. Penn. Nov. 2, 2006) (case unsealed on Sept. 2, 2008)
10	Complaint, <i>U.S. ex rel. Pilecki-Simko v. Chubb Inst.</i> , No. 2:06-cv-3562 (D.N.J. Aug. 2, 2006) (case unsealed on August 21, 2008)

<sup>2</sup> For the Court's convenience, printouts of the ECF dockets are included with each False Claims Act complaint.

Exhibit	Description
11	Complaint, <i>U.S. ex rel. Ortiz v. Univ. of Phoenix</i> , No. 04-cv-00109 (W.D. Tex. Mar. 15, 2004) (case unsealed on Aug. 30, 2006)
12	<i>Enforcement of Federal Anti-Fraud Laws in For-Profit Education: Hearing Before the Committee on Education and the Workforce</i> , U.S. House of Representatives, Serial No. 109-2, 109th Cong. (Mar. 1, 2005), available at <a href="http://www.gpo.gov/fdsys/pkg/CHRG-109hhr99773/pdf/CHRG-109hhr99773.pdf">http://www.gpo.gov/fdsys/pkg/CHRG-109hhr99773/pdf/CHRG-109hhr99773.pdf</a>
13	Consolidated Second Amended Complaint, <i>In re Corinthian Colleges, Inc. Shareholder Litig.</i> , No. CV-04-5025 (C.D. Cal. Oct. 3, 2005)
14	Consolidated Third Amended Complaint, <i>In re Corinthian Colleges, Inc. Shareholder Litig.</i> , No. CV-04-5025 (C.D. Cal. Feb. 6, 2006)
15	Appellant's Opening Brief, <i>Metzler Investment GMBH v. Corinthian Colleges, Inc.</i> , No. 06-55826 (9th Cir. Oct. 10, 2006)
16	U.S. Gov't Accountability Office, <i>Higher Education: Information on Incentive Compensation Violations Substantiated by the U.S. Department of Education</i> , GAO-10-370-R (Feb. 23, 2010) ("GAO Rep."), available at <a href="http://www.gao.gov/assets/100/96559.pdf">http://www.gao.gov/assets/100/96559.pdf</a>
17	<i>Ensuring Student Eligibility Requirements for Financial Aid: Hearing Before the Subcommittee on Higher Education, Lifelong Learning, and Competitiveness, Committee on Education and Labor</i> , U.S. House of Representatives, Serial No. 111-36, 111th Cong. (Oct. 14, 2009), available at <a href="http://www.gpo.gov/fdsys/pkg/CHRG-111hhr52655/pdf/CHRG-111hhr52655.pdf">http://www.gpo.gov/fdsys/pkg/CHRG-111hhr52655/pdf/CHRG-111hhr52655.pdf</a>
18	<i>Emerging Risk? An Overview of the Federal Investment in For-Profit Education: Hearing of the Committee on Health, Education, Labor, and Pensions</i> , U.S. Senate, S. Hrg. No. 111-1000, 111th Cong. (June 24, 2010), available at <a href="http://www.gpo.gov/fdsys/pkg/CHRG-111shrg57222/pdf/CHRG-111shrg57222.pdf">http://www.gpo.gov/fdsys/pkg/CHRG-111shrg57222/pdf/CHRG-111shrg57222.pdf</a>
19	Program Integrity Issues, 75 Fed. Reg. 34,817 (proposed June 18, 2010) (to be codified at 34 C.F.R. pt. 668.14(b)(22)(iii)(C))
20	Complaint, <i>U.S. ex rel. Cruz v. Western Career College</i> , No. 2:07-cv-1666 (E.D. Cal. Aug. 15, 2007) (case unsealed on April 14, 2008)
21	Complaint, <i>U.S. ex rel. Shultz v. DeVry, Inc.</i> , No. 1:07-CV-5425 (N.D. Ill. Sept. 26, 2007) (case unsealed on Sept. 24, 2008)
22	Complaint, <i>U.S. ex rel. Torres v. Kaplan Higher Educ. Corp.</i> , No. 1:07-cv-5643 (N.D. Ill. Oct. 4, 2007) (case unsealed on Apr. 7, 2008)

**Exhibit**

**Description**

- |    |  |
|----|--|
| 23 | First Amended Complaint, <i>U.S. ex rel. Irwin v. Significant Educ., Inc.</i> , No. 2:07-CV-1771 (D. Ariz. Aug. 11, 2008) (case unsealed on Sept. 5, 2008)   |
| 24 | Second Amended Complaint & Demand for Jury Trial, <i>U.S. ex rel. Leveski v. ITT Educ. Servs. Inc.</i> , No. 1:07-CV-00867 (S.D. Ind. Oct. 8, 2009) (complaint publicly filed on CM-ECF on Oct. 8, 2009) |

Respectfully submitted,

DATED: January 14, 2013

MUNGER, TOLLES & OLSON LLP  
Blanca F. Young  
Achyut J. Phadke

By: /s/ Achyut J. Phadke  
ACHYUT J. PHADKE

Attorneys for Defendants  
CORINTHIAN COLLEGES, INC.,  
DAVID MOORE, JACK D.  
MASSIMINO